

EXHIBIT D

RESTRICTIVE COVENANT

EXHIBIT D

RESTRICTIVE COVENANT

Revised 1-27-03

The property that is the subject of this Restrictive Covenant is the subject of a remedial action under Chapter 70.105D.RCW. The work that will be done to clean up the property and conduct long-term operation and maintenance, hereafter the “Cleanup Action”, is described in Consent Decree No. 02205445-0 and in attachments to the Consent Decree and in documents referenced in the Consent Decree. This Restrictive Covenant is required by the Washington State Department of Ecology (Ecology) under Ecology’s rule WAC 173-340-440 because the Cleanup Action on the Site will result in residual soil and ground water concentrations of Total Petroleum Hydrocarbons (TPH), Polycyclic Aromatic Hydrocarbons (PAHs), Carbazole, Cyanide, Arsenic, Barium, Lead, and Selenium which exceed Method A or Method B residential cleanup levels.

The undersigned, Spokane River Properties, Limited, is the fee owner of real property, hereafter “the Property”, in Spokane County, State of Washington, that is subject to this Restrictive Covenant. The Property is legally described in Attachment A of this Restrictive Covenant and incorporated herein by reference.

Spokane River Properties, Limited, makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property, hereafter “Owner”.

Section 1. No groundwater may be taken for domestic, commercial, industrial, or any other purposes from the Property unless the groundwater removal is part of monitoring activities associated with an Ecology approved compliance monitoring plan. No production well will be installed within the Property.

Section 2. Any activity on the Property that may result in the release or exposure to the environment of the contaminated soil or ground water that was contained as part of the Cleanup Action, or create a new exposure pathway, is prohibited without prior

written approval by the Department of Ecology. In the case of an emergency, Ecology shall be contacted within 48 hours of the incident.

Specifically, excavation of soils to depths greater than two (2) feet on the Property is prohibited, unless approved in writing by Ecology. All contaminated soils and/or ground water to be generated must be treated or disposed of according to state, federal, and local regulations. Workers conducting the approved excavations must use appropriate personal protective equipment as required by the Occupational Safety and Health Act (OSHA) and the Washington Industrial Safety and Health Act (WISHA). Excavations up to 2 feet are allowed without approval by Ecology

Section 3. Any activity on the Property that may interfere with the integrity of the Cleanup Action and continued protection of human health and the environment is prohibited, *unless approved by Ecology*. Examples of activities that are prohibited include:

- a. Activities that would disturb the cap or cover of the contaminated soils. Examples of such activities include but are not limited to the following: drilling; driving or boring to install pilings; placement of objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability; piercing the surface with a rod, spike, or similar item; and bulldozing or earthwork.
- b. Activities that would disturb or overload the stormwater system.
- c. Excessive application of water for purposes such as irrigation, washing/rinse down pad, etc. Lawn irrigation at agronomic rates is not considered excessive application of water and is allowed.
- d. Use or storage of chemicals (e.g., solvents, detergents or other surfactants, etc.) that would result in the mobilization of contaminants in soils or ground water contained on Site.

Maintenance or construction activities at the Property that are required in the Cleanup Action are allowed.

Section 4. No activity is allowed that may change the hydrogeologic conditions and that would cause the movement of contaminated ground water to areas outside the impacted soil area.

Section 5. Any construction of buildings or other improvements must address and mitigate, as necessary, potential vapor build-up due to the contamination left on Site. OSHA and WISHA requirements on potential vapor build up must be adhered to.

Section 6. The Owner of the Property must provide access and allow authorized persons to conduct ground water monitoring and cover monitoring as required in the Cleanup Action.

Section 7. The Owner of the Property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner unless the third party buyer agrees to the terms of the Restrictive Covenant.

Section 8. The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all *ground* lessees of the restrictions herein on the use of the Property.

Section 9. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. If Ecology, after public notice and comment approves the proposed change, the restrictive covenant shall be amended to reflect the change.

Section 10. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Cleanup Action; to take samples, to inspect Cleanup Actions conducted at the Property, and to inspect records that are related to the Cleanup Action.

Section 11. Per WAC 173-340-440(12), if the condition(s) requiring an institutional control no longer exist on the Property, the Owner may submit a request to Ecology that the Restrictive Covenant or other restrictions be eliminated. The Restrictive Covenant or other restrictions shall be removed, if Ecology, after public notice and opportunity for comment, concurs.

[NAME OF PROPERTY OWNER]

[DATE SIGNED]

STATE OF WASHINGTON)

) ss.

COUNTY OF)

On this day, _____, personally appeared before me, known to me to be the person who appeared before me, and said person acknowledged that he/she signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in this instrument.

GIVEN UNDER MY HAND and official seal this _____ day of _____, 2001.

Notary Public

My commission Expires: _____